

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2602 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MAHENDRAKUMAR NATHALAL SHAH

Versus

CENTRAL EXCISE AND CUSTOMS DEPARTMENT

Appearance:

MR MB GANDHI for Petitioners

MR BB NAIK for Respondent No. 1, 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 21/08/96

ORAL JUDGEMENT

This Special Civil Application has been filed by the petitioner-Mahendrakumar Nathalal Shah & Ors. under Article 226 of the Constitution of India seeking direction to reassess rent of the subject premises for the period 1982-87 and the subsequent years, and make payment on that basis.

2. The say of the petitioners is that his premises was rented out to the respondents in the year 1975 on a rent of Rs.1.25 per sq.ft. which was fixed at Rs. 1,348/per month. As per the agreement, the rent was required to be revised at an interval of 5 years.

3. So far as fixing of rent for the year 1982-87 is concerned, the same is opposed by Mr B B Naik, learned Addl. Central Government Standing Counsel on the ground of delay in approaching this Court. I have considered the contention of Mr Naik in an identical matter being Special Civil Application No.2397/93 and rejected the same today.

4. It is not in dispute that under the Certificate dated 24.10.1994, the CPWD assessed the rent of the subject premises as per the recognised principles at Rs.2689/- and as per the market rate at Rs.3,652/- per month. Thus, it would be convenient to fix rent of the premises at an average rate which comes to Rs.3,170/- per month. The respondents have no objection for fixing the rent the payment thereto as per the CPWD assessment for 1987 onwards. Under the certificate dated 9.9.1988, the CPWD has assessed rent of the premises under the recognised principles at Rs.4,845/- and as per the market rate at Rs. 5,217/-. In view of this, rent of the premises can be fixed at an average rent which comes to Rs.5,031/- per month. Under the certificate dated 7.12.1993 for the period 1992-93, the CPWD has assessed the rent as per the recognised principles at Rs.6,928/and as per the market rate Rs.9,209/-. Thus, it would be convenient to fix rent of the premises at the average rate which comes to Rs.8,068/- per month. Again under the certificate dated 17.12.1994, the CPWD has assessed rent of the premises under the recognised principles at Rs.9,293/- per month and as per the market rate Rs.9,913/-. Thus, the rent for the period 1993 onwards can be fixed at an average rent which comes to Rs.9,603/per month. It is stated that a certain amount of rent has been paid to the petitioner under the interim orders of this Court.

5. In view of the aforesaid, this Special Civil Application is allowed. Respondents are directed to fix the rent as indicated above for the different periods and further continue to pay the rent for a period of 5 years at the rate of Rs.9,603/- per month as per the agreement. The amount be calculated accordingly after adjusting the amount paid in excess or short. If any amount is paid in excess, the same shall be adjusted in future rent. The

exercise of calculation shall be undertaken and payment,
if any, due shall be made within a period of two months
from the date of receipt of writ.

Rule made absolute accordingly with no order as to costs.

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